

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 29, 2006

AMENDED IN SENATE JUNE 15, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2728

Introduced by Assembly Member Klehs

February 24, 2006

An act to amend ~~Sections 12001 and~~ *Section* 12276.5 of, and to add Section 12282 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2728, as amended, Klehs. Firearms.

~~Existing law establishes a list of certain firearms by make and model as assault weapons and otherwise describes or defines certain firearms as firearms.~~

~~This bill would provide that the term “assault weapon” for those purposes includes the frame or receiver of the weapon.~~

Existing law provides a judicial procedure for declaring a firearm an assault weapon, as specified.

This bill would repeal those provisions.

Existing law authorizes the Attorney General to declare a firearm an assault weapon.

This bill would provide that authorization ends January 1, 2007.

Existing law generally regulates the possession of assault weapons and .50 BMG rifles.

This bill would provide that possession of any assault weapon or of any .50 BMG rifle in violation of specified provisions of law would be a public nuisance. The bill would authorize the Attorney General, any district attorney, or any city attorney to bring an action in superior court, in lieu of criminal prosecution, to enjoin the possession of the assault weapon or .50 BMG rifle. The bill would further provide that any assault weapon or .50 BMG rifle possessed in violation of specified provisions of law would, subject to exception, be destroyed, as specified. The bill would also provide that upon conviction of any misdemeanor or felony involving an assault weapon, the assault weapon would be deemed a nuisance and disposed of as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 12001 of the Penal Code is amended to~~
2 ~~read:~~
3 ~~12001. (a) (1) As used in this title, the terms “pistol,”~~
4 ~~“revolver,” and “firearm capable of being concealed upon the~~
5 ~~person” shall apply to and include any device designed to be used~~
6 ~~as a weapon, from which is expelled a projectile by the force of~~
7 ~~any explosion, or other form of combustion, and that has a barrel~~
8 ~~less than 16 inches in length. These terms also include any device~~
9 ~~that has a barrel 16 inches or more in length which is designed to~~
10 ~~be interchanged with a barrel less than 16 inches in length.~~
11 ~~(2) As used in this title, the term “handgun” means any~~
12 ~~“pistol,” “revolver,” or “firearm capable of being concealed upon~~
13 ~~the person.”~~
14 ~~(b) As used in this title, “firearm” means any device, designed~~
15 ~~to be used as a weapon, from which is expelled through a barrel a~~
16 ~~projectile by the force of any explosion or other form of~~
17 ~~combustion.~~
18 ~~(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072,~~
19 ~~12073, 12078, 12101, and 12801 of this code, and Sections 8100,~~
20 ~~8101, and 8103 of the Welfare and Institutions Code, the term~~
21 ~~“firearm” includes the frame or receiver of the weapon.~~
22 ~~(d) For the purposes of Sections 12025 and 12031, the term~~
23 ~~“firearm” also shall include any rocket, rocket propelled~~
24 ~~projectile launcher, or similar device containing any explosive or~~

1 incendiary material whether or not the device is designed for
2 emergency or distress signaling purposes.

3 (e) For purposes of Sections 12070, 12071, and paragraph (8)
4 of subdivision (a), and subdivisions (b), (c), (d), and (f) of
5 Section 12072, the term “firearm” does not include an unloaded
6 firearm that is defined as an “antique firearm” in Section
7 921(a)(16) of Title 18 of the United States Code.

8 (f) Nothing shall prevent a device defined as a “handgun,”
9 “pistol,” “revolver,” or “firearm capable of being concealed upon
10 the person” from also being found to be a short-barreled shotgun
11 or a short-barreled rifle, as defined in Section 12020.

12 (g) For purposes of Sections 12551 and 12552, the term “BB
13 device” means any instrument that expels a projectile, such as a
14 BB or a pellet, not exceeding 6mm caliber, through the force of
15 air pressure, gas pressure, or spring action, or any spot marker
16 gun.

17 (h) As used in this title, “wholesaler” means any person who is
18 licensed as a dealer pursuant to Chapter 44 (commencing with
19 Section 921) of Title 18 of the United States Code and the
20 regulations issued pursuant thereto who sells, transfers, or
21 assigns firearms, or parts of firearms, to persons who are licensed
22 as manufacturers, importers, or gunsmiths pursuant to Chapter 44
23 (commencing with Section 921) of Title 18 of the United States
24 Code, or persons licensed pursuant to Section 12071, and
25 includes persons who receive finished parts of firearms and
26 assemble them into completed or partially completed firearms in
27 furtherance of that purpose.

28 “Wholesaler” shall not include a manufacturer, importer, or
29 gunsmith who is licensed to engage in those activities pursuant to
30 Chapter 44 (commencing with Section 921) of Title 18 of the
31 United States Code or a person licensed pursuant to Section
32 12071 and the regulations issued pursuant thereto. A wholesaler
33 also does not include those persons dealing exclusively in grips,
34 stocks, and other parts of firearms that are not frames or receivers
35 thereof.

36 (i) As used in Section 12071 or 12072, “application to
37 purchase” means any of the following:

38 (1) The initial completion of the register by the purchaser,
39 transferee, or person being loaned the firearm as required by
40 subdivision (b) of Section 12076.

~~(2) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.~~

~~(j) For purposes of Section 12023, a firearm shall be deemed to be “loaded” whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.~~

~~(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term “any firearm” may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.~~

~~(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.~~

~~(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant’s fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.~~

~~(n) As used in this chapter, a “personal handgun importer” means an individual who meets all of the following criteria:~~

~~(1) He or she is not a person licensed pursuant to Section 12071.~~

~~(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.~~

~~(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.~~

~~(4) He or she is the owner of a handgun.~~

~~(5) He or she acquired that handgun outside of California.~~

~~(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.~~

~~(7) He or she intends to possess that handgun within this state on or after January 1, 1998.~~

1 ~~(8) The handgun was not delivered to him or her by a person~~
2 ~~licensed pursuant to Section 12071 who delivered that firearm~~
3 ~~following the procedures set forth in Section 12071 and~~
4 ~~subdivision (c) of Section 12072.~~

5 ~~(9) He or she, while a resident of this state, had not previously~~
6 ~~reported his or her ownership of that handgun to the Department~~
7 ~~of Justice in a manner prescribed by the department that included~~
8 ~~information concerning him or her and a description of the~~
9 ~~firearm.~~

10 ~~(10) The handgun is not a firearm that is prohibited by~~
11 ~~subdivision (a) of Section 12020.~~

12 ~~(11) The handgun is not an assault weapon, as defined in~~
13 ~~Section 12276 or 12276.1.~~

14 ~~(12) The handgun is not a machinegun, as defined in Section~~
15 ~~12200.~~

16 ~~(13) The person is 18 years of age or older.~~

17 ~~(o) For purposes of paragraph (6) of subdivision (n):~~

18 ~~(1) Except as provided in paragraph (2), residency shall be~~
19 ~~determined in the same manner as is the case for establishing~~
20 ~~residency pursuant to Section 12505 of the Vehicle Code.~~

21 ~~(2) In the case of members of the Armed Forces of the United~~
22 ~~States, residency shall be deemed to be established when he or~~
23 ~~she was discharged from active service in this state.~~

24 ~~(p) As used in this code, "basic firearms safety certificate"~~
25 ~~means a certificate issued by the Department of Justice pursuant~~
26 ~~to Article 8 (commencing with Section 12800) of Chapter 6 of~~
27 ~~Title 2 of Part 4, prior to January 1, 2003.~~

28 ~~(q) As used in this code, "handgun safety certificate" means a~~
29 ~~certificate issued by the Department of Justice pursuant to Article~~
30 ~~8 (commencing with Section 12800) of Chapter 6 of Title 2 of~~
31 ~~Part 4, as that article is operative on or after January 1, 2003.~~

32 ~~(r) As used in this title, "gunsmith" means any person who is~~
33 ~~licensed as a dealer pursuant to Chapter 44 (commencing with~~
34 ~~Section 921) of Title 18 of the United States Code and the~~
35 ~~regulations issued pursuant thereto, who is engaged primarily in~~
36 ~~the business of repairing firearms, or making or fitting special~~
37 ~~barrels, stocks, or trigger mechanisms to firearms, or the agent or~~
38 ~~employee of that person.~~

39 ~~(s) For purposes of Section 12276 the term "assault weapon"~~
40 ~~includes the frame or receiver of the weapon.~~

1 ~~SEC. 2.~~

2 ~~SECTION 1.~~ Section 12276.5 of the Penal Code is amended
3 to read:

4 12276.5. (a) ~~(1)~~—The Attorney General shall prepare a
5 description for identification purposes, including a picture or
6 diagram, of each assault weapon listed in Section 12276, and any
7 firearm declared to be an assault weapon pursuant to this section,
8 and shall distribute the description to all law enforcement
9 agencies responsible for enforcement of this chapter. Those law
10 enforcement agencies shall make the description available to all
11 agency personnel.

12 ~~(2) For purposes of this section, the term “assault weapon”~~
13 ~~includes the frame or receiver of the weapon.~~

14 (b) (1) Until January 1, 2007, the Attorney General shall
15 promulgate a list that specifies all firearms designated as assault
16 weapons in Section 12276 or declared to be assault weapons
17 pursuant to this section. The Attorney General shall file that list
18 with the Secretary of State for publication in the California Code
19 of Regulations. Any declaration that a specified firearm is an
20 assault weapon shall be implemented by the Attorney General
21 who, within 90 days, shall promulgate an amended list which
22 shall include the specified firearm declared to be an assault
23 weapon. The Attorney General shall file the amended list with
24 the Secretary of State for publication in the California Code of
25 Regulations. Any firearm declared to be an assault weapon prior
26 to January 1, 2007, shall remain on the list filed with the
27 Secretary of State.

28 (2) Chapter 3.5 (commencing with Section 11340) of Division
29 3 of Title 2 of the Government Code, pertaining to the adoption
30 of rules and regulations, shall not apply to any list of assault
31 weapons promulgated pursuant to this section.

32 (c) The Attorney General shall adopt those rules and
33 regulations that may be necessary or proper to carry out the
34 purposes and intent of this chapter.

35 ~~SEC. 3.~~

36 ~~SEC. 2.~~ Section 12282 is added to the Penal Code, to read:

37 12282. (a) ~~Possession—~~*Except as provided in Section 12280,*
38 *possession* of any assault weapon, as defined in Section 12276,
39 12276.1 or 12276.5, or of any .50 BMG rifle, in violation of this
40 chapter is a public nuisance. The Attorney General, any district

1 attorney, or any city attorney may, in lieu of criminal
2 prosecution, bring an action in superior court to enjoin the
3 possession of the assault weapon or .50 BMG rifle. Any assault
4 weapon or .50 BMG rifle possessed in violation of, or otherwise
5 in violation of this chapter shall be destroyed in a manner so that
6 it may no longer be used, except upon the filing of a certificate of
7 a judge of a court of record, or the district attorney, or the
8 Department of Justice stating that the preservation of the assault
9 weapon or .50 BMG rifle is necessary to serve the ends of
10 justice.

11 (b) Upon conviction of any misdemeanor or felony involving
12 an assault weapon, the assault weapon shall be deemed a
13 nuisance and disposed of pursuant to subdivision (d) of Section
14 12028.

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